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12 Attorneys for Defendant/Counter-Plaintiff,  
13 Keating Dental Arts, Inc.

14  
15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
17 SOUTHERN DIVISION

18  
19 JAMES R. GLIDEWELL DENTAL ) Civil Action No.  
20 CERAMICS, INC. dba ) SACV11-01309-DOC(ANx)  
21 GLIDEWELL LABORATORIES, )  
22 Plaintiff/Counter-defendant, ) **SUPPLEMENTAL DISCLOSURES**  
23 v. ) **OF KEATING DENTAL ARTS,**  
24 KEATING DENTAL ARTS, INC. ) **INC. PURSUANT TO FEDERAL**  
25 ) **RULE OF CIVIL PROCEDURE**  
26 ) **26(a)(1) AND (e) AND L.R. 26-1**  
27 )  
28 ) Honorable David O. Carter  
29 )  
30 )

1 Pursuant to Federal Rule of Civil Procedure 26(a)(1) and (e), without  
 2 waiving any claim of privilege, work produced or other basis for non-disclosure,  
 3 Defendant Keating Dental Arts, Inc. ("Keating"), hereby provides the following  
 4 Supplemental Disclosures.

5 (i) The name and, if known, the address and telephone number of each  
 6 individual likely to have discoverable information - along with the subjects of  
 7 that information - that the disclosing party may use to support its claims or  
 8 defenses, unless the use would be solely for impeachment; information:

10 Witness Email Address	11 Address/Website/Telephone	12 Subject of the Likely 13 Discoverable 14 Information
15 Shaun Keating	16 16881 Hale Ave. 17 Irvine, CA 92606 18 (800) 433-9833	19 Use of generic term "bruxer," lack of confusion, and related facts
20 Bob Brandon	21 16881 Hale Ave. 22 Irvine, CA 92606 23 (800) 433-9833	24 Use of generic term "bruxer," lack of confusion, and related facts
25 Daxton Grubb 26 daxton@rdentlab.com	27 R-Dent Dental Laboratories 28 6590 Summer Knoll Cove Bartlett, TN 38134 www.rdentlab.com 372-8020	29 Glidewell demands to stop using R BRUX Trademark, and related facts
30 Robert P. Marbach 31 sevices@authenticlab 32 com	33 Authentic Dental Lab 34 1950 Bandera Rd. 35 San Antonio, TX 78228 36 www.authenticlab.com 37 735-1433	38 Glidewell demands to stop using "BRUX" crowns on Authentic's website, and related facts
39 Rick Everson 40 reverson@dentalservices 41 .net	42 Sentage Corporation 43 5775 Wayzata Blvd. 44 Suite 890 45 Minneapolis, MN 55416 46 www.dentalservices.net 47 345-6300	48 BRUX-EZE Trademark and related facts
49 Robin A. Carden	50 Glidewell Laboratories 51 4141 MacArthur Blvd 52 Newport Beach, CA 92660 53 (800) 854-7256	54 Use of "bruxer" and "zirconia" as generic terms.

1	Witness Email Address	Address/Website/Telephone	Subject of the Likely Discoverable Information
2	Dr. William Belton	403 Vonderburg Dr. Suite 201 Brandon, FL 33511 (813) 689-5098	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
3	Dr. David Bonner	101 Binkley PO Box 592 Dumas, TX 79029 (806) 935-6811	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
4	Dr. Jonathan Campbell	Legacy Dental 1345 E. 3900 South Suite 116 Salt Lake City, UT 84124 (801) 278-4223	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
5	Dr. Joseph Jacquinot	Platteville Dental 1270 N. Water St. Platteville, WI 53818 (608) 348-2393	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
6	Dr. Dennis Murphy	310 Terrace Ave. Suite #102 Cincinnati, OH 45220 (513) 221-1550	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
7	Dr. Terry L. Myers	109 Apple Valley Parkway Belton, MO 64012 (816) 331-4200	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
8	Dr. Samir Rana	60 Beaverbrook Rd. Lincoln Park, NJ 07035 (973) 633-5666	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.

1	Witness Email Address	Address/Website/Telephone	Subject of the Likely Discoverable Information
2	Dr. Michael Razzano	12910 Hwy 92 #107 Woodstock, GA 30188 (770) 592-2600	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
3	Dr. Stan Richardson	780 Nissan Dr. Smyrna, TN 37167 (615) 355-1062	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
4	Dr. Trevor Scheff	6300 Limestone Rd. Suite D Hockessin, DE 19707 (302) 239-7277	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
5	Dr. Scott Stephens	2538 E Joyce Blvd. Fayetteville, AR 72703 (479) 442-3915	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
6	Dr. Robert T. Wooton	3000 N Interstate 35 Austin, TX 78705 (512) 472-2246	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
7	Dr. Tony D. Wu	155 E. 38th Suite 2D New York, NY 10016 (212) 682-0888	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
8	Dr. Gary P. Tobin	16055 Ventura Blvd Suite 1035 Encino, CA 91436 (818) 990-5240	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.

1	Witness Email Address	Address/Website/Telephone	Subject of the Likely Discoverable Information
2	Dr. Jenny Harris	2504 Lake Austin Blvd Austin, TX 78703 (512) 474-5233	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
3	Dr. Joseph Ting	3461 US Highway 22 East Branchburg, NJ 08876 (908) 203-1998	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
4	Dr. Raymond Brady	2700 Bellflower Blvd. Suite 306 Long Beach, CA 90815 (562) 420-1301	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
5	Dr. Michael Colleran	1250 Peach Street San Luis Obispo, CA 93401 (805) 543-0814	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
6	Dr. Richard Scott	215 N. State College Blvd. Suite E Anaheim, CA 92806 (714) 635-0892	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
7	Dr. Daniel Sweet	1990 Shaw Avenue Suite C Clovis, CA 93611 (559) 298-2575	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
8	Dr. George Tashiro	558 E. Wardlow Rd. Long Beach, CA 90807 (562) 427-1221	Absence of confusion between marks Bruxzir and KDZ Bruxer. “Bruxzir” on Rx form meant to communicate generic term for a bruxer crown.
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1	Witness Email Address	Address/Website/Telephone	Subject of the Likely Discoverable Information
2	Carol Frattura	22286 Vick Street Port Charlotte, FL 33980 (888) 625-5757	Glidewell demands to stop using Zir-Bruxer Crown mark and related facts. Use of "bruxer" and similar words by dentists when ordering all zirconia crowns.
3	Dr. David Eggleston	1441 Avocado Ave Suite 508 Newport Beach, CA 92660 (949) 640-5680	Expert testimony regarding use of term "bruxer" and related terms in the dental industry.
4	Expert witnesses to be identified		

5  
6 (ii) A copy - or a description by category and location - of all documents,  
7 electronically stored information ("ESI"), and tangible things that the disclosing  
8 party has in its possession, custody, or control and may use to support its claims  
9 or defenses, unless the use would be solely for impeachment:

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15 ***Disclosure:*** Pursuant to appropriate terms of the Confidentiality  
16 Order, Keating will make available for inspection and copying responsive  
17 documents, ESI, and tangible things as indicated below. Defendant notes  
18 that Defendant already has identified to Plaintiff at least certain of the  
19 items listed. Also subject to an appropriate Protective Order and further  
20 review, Defendants may produce or make available under Federal Rule of  
21 Civil Procedure 34 additional documents/evidence, as those may come to  
22 the attention of Defendant.

23	Description, etc.
24	The trademarks and related information disclosed in the attachment to an email 25 dated November 16,2011 to Plaintiff's counsel Mr. Tachner, from Defendant's 26 counsel.
27	Correspondence from Glidewell to third parties regarding the use by those third 28 parties of the term BRUX or BRUX-related words.
29	Defendant's order forms and related records, as provided to and as received 30 from dentists.
31	Defendant's sales records relating the products sold under Defendant's 32 trademark KDZ BRUXER AND DESIGN.
33	Scholarly articles using the terms "zirconia" or "bruxer", "brux", "bruxism", or 34 other related terms with a root of "brux."

<u>Description, etc.</u>
1 Patents and patent applications using the terms "zirconia" or "bruxer", "brux", 2 "bruxism", or other terms with a root of "brux."
3 Advertisements from Glidewell Laboratories showing use of "bruxzir" to 4 indicate the product itself and not as a brand name. Copies of material from 5 Glidewell's websites www.glidewelldental.com, www.bruxzir.com as well as 6 other advertisements by Glidewell.
7 Defendant's and third party advertisements that show use of the term "bruxer," 8 "brux," or other related words to refer generically to a bruxer crown product.

8 (iii) A computation of each category of damages claimed by the  
9 disclosing party ~ who must also make available for inspection and copying as  
10 under Rule 34 the documents or other evidentiary material, unless privileged or  
11 protected from disclosure, on which each computation is based, including  
12 materials bearing on the nature and extent of injuries suffered.

13 **Disclosure:** Defendant and Counterclaim-Plaintiff has not  
14 calculated its damages at this time, and is not in possession of the  
15 information necessary to do so. Among other things, Defendant and  
16 Counter-Defendant anticipates (1) possibly hiring an expert to do so, and  
17 (2) forwarding that expert's report in compliance with all applicable Rules  
18 and Orders.

19 In any case, such damages are likely to be based at least in part on  
20 obtaining an award from the Court of misuse of trademark and/or other  
21 bad faith violations by Plaintiff, the amount and nature of Plaintiff's  
22 unlawful activities in improperly restricting lawful competition, the extent  
23 to which remedial communications and advertising may be necessary to  
24 attempt to redress same, and other factors. Those issues and activities  
25 appear to be continuing and therefore the subject of ongoing discovery.

26 Among other things, the damages are likely to include calculations  
27 of Plaintiff's profits and/or Defendant's lost profits. In addition, Defendant  
28 reserves the right to appropriately designate with appropriate terms of  
29 confidentiality under the Confidentiality Order any and/or all such  
30 disclosures. Notwithstanding the foregoing, for the convenience of the  
31 parties and the Court, Defendant identifies at least the following  
32 categories of damages it expects will be included in the foregoing  
33 disclosures.

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35     ///  
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Category of Damages
1 Attorney fees and costs
2 Punitive damages
3 Lost sales
4 Interference with existing/prospective business relationships
5 Damages to business reputation
6 Employee time
7 Out-of-pocket expenses
8 Other

10 (iv) For inspection and copying as under Rule 34, any insurance  
 11 agreement under which an insurance business may be liable to satisfy all or part  
 12 of a possible judgment in the action or to indemnify or reimburse for payments  
 13 made to satisfy the judgment.

14  
 15 ***Disclosure:*** Pursuant to appropriate terms of confidentiality under  
 16 the Confidentiality Order, Keating will make available for inspection and  
 copying the following insurance policy:

17 The Hartford Business Liability Policy 72 SBA AB1425, with  
 18 effective dates of 09/04/2010 to 09/04/2011 and 09/04/2011 to  
 09/04/2012.

19 Defendant expressly reserves the right to further supplement these Initial  
 20 Disclosures under Federal Rule of Civil Procedure 26(e), without prejudice to  
 21 its right to use such subsequently discovered information and documents at trial  
 22 or at any proceeding in this action.

23  
 24 The undersigned counsel certifies under Federal Rule of Civil Procedure  
 25 26(g) that, after reasonable inquiry and to the best of his/her knowledge, the  
 26 Disclosures contained above are accurate and complete as of the present time.  
 27  
 28 / / /  
 / / /

1 KNOBBE, MARTENS, OLSON & BEAR, LLP  
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3 Dated: September 21, 2012 By: /s/ Lynda J. Zadra-Symes  
4 Lynda J. Zadra-Symes  
5 Jeffrey L. Van Hoosear  
David G. Jankowski

6 Attorneys for Plaintiff,  
7 Keating Dental Arts, Inc.  
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**PROOF OF SERVICE**

2 I am a citizen of the United States of America and I am employed in  
3 Irvine, California. I am over the age of 18 and not a party to the within action.  
4 My business address is 2040 Main Street, Fourteenth Floor, Irvine, California. I  
5 am readily familiar with the firm's business practices for the collection and  
6 processing of correspondence for mailing, and that mail so processed will be  
7 deposited the same day during the ordinary course of business.

8 On September 21, 2012, I caused the within SUPPLEMENTAL  
9 DISCLOSURES OF KEATING DENTAL ARTS, INC. PURSUANT TO  
10 FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1) AND (e) AND L.R. 26-1  
11 to be served on the parties or their counsel shown below, by placing it in a  
12 sealed envelope addressed as follows:

13 ***Via Electronic and First Class Mail:***

14 Leonard Tachner, Esq.  
15 LEONARD TACHNER, A Professional Law Corp.  
16 17961 Sky Park Circle, Suite 38-E  
Irvine, CA 92614-6364  
Email: ltachner@aol.com

17 I declare that I am employed in the office of a member of the bar of this  
18 Court at whose direction the service was made.

19 Executed on September 21, 2012 at Irvine, California.

20   
21 Claire A. Stoneman

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